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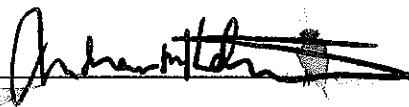
Chapter No. 431

16/HR43/R1926SG

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HOUSE BILL NO. 1240

Originated in House



Clerk

PROVIDE FOR POST-JUDGMENT PROCEEDINGS; TO CREATE NEW SECTION 93-15-133, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEALS; TO AMEND SECTIONS 93-17-5, 93-17-6 AND 93-17-7, MISSISSIPPI CODE OF 1972, TO REVISE THE ADOPTION LAW TO CONFORM TO THIS ACT; TO REPEAL SECTION 93-17-9, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE SURRENDER OF A CHILD TO AN ORGANIZATION ORGANIZED FOR THE PURPOSE OF CARING FOR OR ADOPTION OF CHILDREN; TO REPEAL SECTIONS 93-15-103, 93-15-105, 93-15-107, 93-15-109 AND 93-15-111, MISSISSIPPI CODE OF 1972, WHICH COMPRISE THE SUBSTANTIVE PORTION OF THE TERMINATION OF RIGHTS OF UNFIT PARENTS LAW; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 93-15-101, Mississippi Code of 1972, is amended as follows:

93-15-101. This chapter shall be known and may be cited as the "Mississippi Termination of Parental Rights * * * Law."

SECTION 2. Sections 3 through 18 of this act shall be codified in Chapter 15, Title 93, Mississippi Code of 1972, as the Mississippi Termination of Parental Rights Law to replace Sections 93-15-103 through 93-15-111, which are repealed in Section 23 of this act.

SECTION 3. The following shall be codified as Section 93-15-103, Mississippi Code of 1972:

93-15-103. Definitions. For purposes of this chapter, unless a different meaning is plainly expressed by the context, the following definitions apply:

(a) "Abandonment" means any conduct by the parent, whether consisting of a single incident or actions over an extended period of time, that evinces a settled purpose to

HOUSE BILL NO. 1240

AN ACT TO AMEND SECTION 93-15-101, MISSISSIPPI CODE OF 1972, TO AMEND THE SHORT TITLE OF THE CHAPTER REGARDING TERMINATION OF PARENTAL RIGHTS; TO CREATE NEW SECTION 93-15-103, MISSISSIPPI CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION 93-15-105, MISSISSIPPI CODE OF 1972, TO SPECIFY JURISDICTION AND VENUE UNDER THE ACT; TO CREATE NEW SECTION 93-15-107, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE COMMENCEMENT OF PROCEEDINGS, NECESSARY PARTIES AND SUMMONS; TO CREATE NEW SECTION 93-15-109, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR SURRENDER OF A CHILD; TO CREATE NEW SECTION 93-15-111, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR TERMINATION BY WRITTEN VOLUNTARY RELEASE; TO CREATE NEW SECTION 93-15-113, MISSISSIPPI CODE OF 1972, TO PROVIDE PROCEDURES FOR THE INVOLUNTARY TERMINATION OF PARENTAL RIGHTS; TO CREATE NEW SECTION 93-15-115, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INVOLUNTARY TERMINATION WHERE A REUNIFICATION ATTEMPT IS MANDATORY; TO CREATE NEW SECTION 93-15-117, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INVOLUNTARY TERMINATION WHERE A REUNIFICATION ATTEMPT IS NOT REQUIRED; TO CREATE NEW SECTION 93-15-119, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INVOLUNTARY TERMINATION FOR ABANDONMENT, DESERTION OR UNFITNESS; TO CREATE NEW SECTION 93-15-121, MISSISSIPPI CODE OF 1972, TO SPECIFY GROUNDS FOR TERMINATION; TO CREATE NEW SECTION 93-15-123, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COURT TO DECLINE TO TERMINATE PARENTAL RIGHTS WHEN IN THE CHILD'S BEST INTEREST; TO CREATE NEW SECTION 93-15-125, MISSISSIPPI CODE OF 1972, TO REQUIRE COMPLIANCE WITH THE FEDERAL INDIAN CHILD WELFARE ACT; TO CREATE NEW SECTION 93-15-127, MISSISSIPPI CODE OF 1972, TO PROVIDE THE EFFECT OF TERMINATION ON THE OTHER PARENT; TO CREATE NEW SECTION 93-15-129, MISSISSIPPI CODE OF 1972, TO SPECIFY WHEN A TERMINATION IS A PREFERENCE CASE; TO CREATE NEW SECTION 93-15-131, MISSISSIPPI CODE OF 1972, TO

relinquish all parental claims and responsibilities to the child.

Abandonment may be established by showing:

(i) For a child who is under three (3) years of age on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for six (6) months;

(ii) For a child who is three (3) years of age or older on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for at least one (1) year; or

(iii) If the child is under six (6) years of age, that the parent has exposed the child in any highway, street, field, outhouse, or elsewhere with the intent to wholly abandon the child.

(b) "Child" means a person under eighteen (18) years of age.

(c) "Court" means the court having jurisdiction under the Mississippi Termination of Parental Rights Law.

(d) "Desertion" means:

(i) Any conduct by the parent over an extended period of time that demonstrates a willful neglect or refusal to provide for the support and maintenance of the child; or

(ii) That the parent has not demonstrated, within a reasonable period of time after the birth of the child, a full commitment to the responsibilities of parenthood.

(e) "Home" means any charitable or religious corporation or organization or the superintendent or head of the charitable or religious corporation or organization organized under the laws of the State of Mississippi, any public authority to which has been granted the power to provide care for or procure the adoption of children by any Mississippi statute, and any association or institution engaged in placing children for adoption on July 1, 1955.

(f) "Interested person" means any person related to the child by consanguinity or affinity, a custodian or legal guardian of the child, a guardian ad litem representing the child's best interests, or an attorney representing the child's preferences under Rule 13 of the Uniform Rules of Youth Court Practice.

(g) "Minor parent" means any parent under twenty-one (21) years of age.

(h) "Parent" means a natural or adoptive parent of the child.

(i) "Permanency outcome" means achieving a permanent or long-term custodial arrangement for the custody and care of the child that ends the supervision of the Department of Human Services.

(j) "Qualified health professional" means a licensed or certified professional who is engaged in the delivery of health services and who meets all applicable federal or state requirements to provide professional services.

(k) "Qualified mental health professional" means a person with at least a master's degree in mental health or a related field and who has either a professional license or a Department of Mental Health credential as a mental health therapist.

(l) "Reunification" means the restoration of the parent's custodial rights in providing for the safety and welfare of the child which ends the supervision of the Department of Human Services.

SECTION 4. The following shall be codified as Section 93-15-105, Mississippi Code of 1972:

93-15-105. **Jurisdiction and venue.** (1) The chancery court has original exclusive jurisdiction over all termination of parental rights proceedings except that a county court, when sitting as a youth court with jurisdiction of a child in an abuse or neglect proceeding, has original exclusive jurisdiction to hear a petition for termination of parental rights against a parent of that child.

(2) (a) Venue in a county court sitting as a youth court for termination of parental rights proceedings shall be in the county in which the court has jurisdiction of the child in the abuse or neglect proceedings. Venue in chancery court for termination of parental rights proceedings shall be proper either in the county in which the defendant resides, the child resides or

in the county where an agency or institution having custody of the child is located.

(b) Transfers of venue shall be governed by the Mississippi Rules of Civil Procedure.

SECTION 5. The following shall be codified as Section 93-15-107, Mississippi Code of 1972:

93-15-107. **Commencement of proceedings; parties; summons.**

(1) (a) Termination of parental rights proceedings are commenced upon the filing of a petition under this chapter. The petition may be filed by any interested person, or any agency or institution holding custody of the child. The simultaneous filing of a petition for adoption is not a pre-requisite for filing a petition under this chapter.

(b) The proceeding shall be triable, either in term time or vacation, thirty (30) days after personal service of process to any necessary party or, for a nonresident necessary party whose address is unknown after diligent search, thirty (30) days after the date of the first publication of service of process by publication that complies with the Mississippi Rules of Civil Procedure.

(c) Necessary parties to a termination of parental rights action shall include the mother of the child, the legal father of the child, the putative father of the child when known, any agency or institution holding custody of the child, and the

child. The absence of a necessary party does not preclude the court from conducting the hearing or rendering a final judgment.

(d) A guardian ad litem shall be appointed to protect the best interest of the child. The guardian ad litem fees shall be determined and assessed in the discretion of the court.

(2) In all cases involving termination of parental rights, a minor parent shall be served with process as an adult.

(3) The court may waive service of process if an adoptive child was born in a foreign country, put up for adoption in the birth country, and has been legally admitted into this country.

SECTION 6. The following shall be codified as Section 93-15-109, Mississippi Code of 1972:

93-15-109. Surrender of a child to the Department of Human Services or a home. (1) A parent may accomplish the surrender of a child to the Department of Human Services or to a home by:

(a) Delivering the child to the Department of Human Services or the home;

(b) Executing an affidavit of a written agreement that names the child and which vests in the Department of Human Services or the home the exclusive custody, care and control of the child; and

(c) Executing a written voluntary release as set forth in Section 93-15-111(2).

(2) If a child has been surrendered to a home or other agency operating under the laws of another state, and the child is

delivered into the custody of a petitioner or home within this state, the execution of consent by the nonresident home or agency shall be sufficient.

(3) Nothing in this section prohibits the delivery and surrender of a child to an emergency medical services provider pursuant to Sections 43-15-201 through 43-15-209.

SECTION 7. The following shall be codified as Section 93-15-111, Mississippi Code of 1972:

93-15-111. **Termination by written voluntary release.** (1) A parent or an interested person may petition the court to accept a parent's written voluntary release that relinquishes all of the parent's parental rights to the child.

(2) The court may accept the parent's execution of a written voluntary release if it meets the following minimum requirements:

(a) Is signed under oath and dated at least seventy-two (72) hours after the birth of the child;

(b) States the parent's full name, the relationship of the parent to the child, and the parent's address for service of process in the proceedings to terminate parental rights;

(c) States the child's full name, date and time of birth, and place of birth as indicated on the birth certificate;

(d) Identifies the governmental agency or home to which the child has been surrendered, if any;

(e) States the parent's consent to adoption of the child and waiver of service of process for any future adoption proceedings;

(f) Acknowledges that the termination of the parent's parental rights and that the subsequent adoption of the child may significantly affect, or even eliminate, the parent's right to inherit from the child under the laws of Descent and Distribution (Chapter 1, Title 91, Mississippi Code of 1972);

(g) Acknowledges that all provisions of the written voluntary release were entered into knowingly, intelligently, and voluntarily; and

(h) Acknowledges that the parent is entitled to consult an attorney regarding the parent's parental rights.

(3) An adult or minor parent who is mentally competent may relinquish all parental rights to a child, waive service of process, and consent to be voluntarily joined as a co-petitioner in a termination of parental rights proceeding, consistent with Rule 81(a)(9) of the Mississippi Rules of Civil Procedure, by filing with the court, or by authorizing an interested person to file with the court, an affidavit of a written waiver of service of process and a consent to be voluntarily joined as a co-petitioner that is dated and signed by the parent no earlier than ninety (90) days before filing of the petition or at any time after the commencement of the action, thereby allowing the court

to fully adjudicate the parent's parental rights in the absence of the parent.

(4) The court's order accepting the parent's written voluntary release terminates all of the parent's parental rights to the child, including, but not limited to, the parental right to control or withhold consent to an adoption.

SECTION 8. The following shall be codified as Section 93-15-113, Mississippi Code of 1972:

93-15-113. **Conduct of hearing for involuntary termination of parental rights; counsel for parent.** (1) A hearing on the involuntary termination of parental rights shall be conducted without a jury and in accordance with the Mississippi Rules of Evidence. The court may exclude the attendance of the child from the hearing with the consent of the child's guardian ad litem or legal counsel.

(2) (a) At the beginning of the involuntary termination of parental rights hearing, the court shall determine whether all necessary parties are present and identify all persons participating in the hearing; determine whether the notice requirements have been complied with and, if not, determine whether the affected parties intelligently waived compliance with the notice requirements; explain to the parent the purpose of the hearing, the standard of proof required for terminating parental rights, and the consequences if the parent's parental rights are terminated. The court shall also explain to the parent:

(i) The right to counsel;
(ii) The right to remain silent;
(iii) The right to subpoena witnesses;
(iv) The right to confront and cross-examine
witnesses; and

(v) The right to appeal, including the right to a transcript of the proceedings.

(b) The court shall then determine whether the parent before the court is represented by counsel. If the parent wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the parent to obtain and consult with counsel of the parent's own choosing. If an indigent parent does not have counsel, the court shall determine whether the parent is entitled to appointed counsel under the Constitution of the United States, the Mississippi Constitution of 1890, or statutory law and, if so, appoint counsel for the parent and then continue the hearing for a reasonable time to allow the parent to consult with the appointed counsel. The setting of fees for court-appointed counsel and the assessment of those fees are in the discretion of the court.

SECTION 9. The following shall be codified as Section 93-15-115, Mississippi Code of 1972:

93-15-115. Involuntary termination when child in care and custody or under the supervision of the Department of Human Services pursuant to youth court proceedings and reasonable

efforts for reunification are required; standard of proof. When reasonable efforts for reunification are required for a child who is in the custody of, or under the supervision of, the Department of Human Services pursuant to youth court proceedings, the court hearing a petition under this chapter may terminate the parental rights of a parent if, after conducting an evidentiary hearing, the court finds by clear and convincing evidence that:

(a) The child has been adjudicated abused or neglected;

(b) The child has been in the custody and care of, or under the supervision of, the Department of Human Services for at least six (6) months, and, in that time period, the Department of Human Services has developed a service plan for the reunification of the parent and the child;

(c) A permanency hearing, or a permanency review hearing, has been conducted pursuant to the Uniform Rules of Youth Court Practice and the court has found that the Department of Human Services, or a licensed child caring agency under its supervision, has made reasonable efforts over a reasonable period to diligently assist the parent in complying with the service plan but the parent has failed to substantially comply with the terms and conditions of the plan and that reunification with the abusive or neglectful parent is not in the best interests of the child; and

(d) Termination of the parent's parental rights is appropriate because future contacts between the parent and child

are not desirable toward obtaining a satisfactory permanency outcome based on one or more of the factors set out in Section 93-15-121.

SECTION 10. The following shall be codified as Section 93-15-117, Mississippi Code of 1972:

93-15-117. **Involuntary termination when child in care and custody or under supervision of the Department of Human Services pursuant to youth court proceedings and reasonable efforts for reunification are not required; standard of proof.** When reasonable efforts for reunification are not required, a court hearing a petition under this chapter may terminate the parental rights of a parent if, after conducting an evidentiary hearing, the court finds by clear and convincing evidence:

(a) That the child has been adjudicated abused or neglected;

(b) That the child has been in the custody and care of, or under the supervision of, the Department of Human Services for at least sixty (60) days and the Department of Human Services is not required to make reasonable efforts for the reunification of the parent and the child pursuant to Section 43-21-603(7)(c) of the Mississippi Youth Court Law;

(c) That a permanency hearing, or a permanency review hearing, has been conducted pursuant to the Uniform Rules of Youth Court Practice and the court has found that reunification with the

abusive or neglectful parent is not in the best interests of the child; and

(d) That termination of the parent's parental rights is appropriate because future contacts between the parent and child are not desirable toward obtaining a satisfactory permanency outcome based on one or more of the following grounds:

(i) The basis for bypassing the reasonable efforts for reunification of the parent and child under Section 43-21-603(7)(c) is established by clear and convincing evidence; or

(ii) Any ground listed in Section 93-15-121 is established by clear and convincing evidence.

SECTION 11. The following shall be codified as Section 93-15-119, Mississippi Code of 1972:

93-15-119. Involuntary termination in chancery court for reasons of abandonment, desertion, or parental unfitness to raise the child; standard of proof. (1) A chancery court hearing a petition under this chapter may terminate the parental rights of a parent when, after conducting an evidentiary hearing, the court finds by clear and convincing evidence:

(a) That the parent has engaged in conduct constituting abandonment or desertion of the child or is mentally, morally, or otherwise unfit to raise the child. The court shall inquire as to the military status of any absent parent. Proof that a parent is mentally, morally, or otherwise unfit to raise the child shall be

established by showing past or present conduct of the parent that demonstrates a substantial risk of compromising or endangering the child's safety and welfare; and

(b) That termination of the parent's parental rights is appropriate because future contacts between the parent and child are not desirable toward obtaining a satisfactory permanency outcome based on one or more of the factors set out in Section 93-15-121.

(2) An allegation of desertion may be fully rebutted by proof that the parent, in accordance with the parent's means and knowledge of the mother's pregnancy or the child's birth, either:

(a) Provided financial support, including, but not limited to, the payment of consistent support to the mother during her pregnancy, contributions to the payment of the medical expenses of the pregnancy and birth, and contributions of consistent support of the child after birth; frequently and consistently visited the child after birth; and is now willing and able to assume legal and physical care of the child; or

(b) Was willing to provide financial support and to make visitations with the child, but reasonable attempts to do so were thwarted by the mother or her agents, and that the parent is now willing and able to assume legal and physical care of the child.

SECTION 12. The following shall be codified as Section 93-15-121, Mississippi Code of 1972:

93-15-121. **Grounds for termination.** The following factors if established by clear and convincing evidence may be grounds for termination of the parent's parental rights if future contacts between the parent and child are not desirable toward obtaining a satisfactory permanency outcome:

(a) The parent has been medically diagnosed by a qualified mental health professional with a severe mental illness or deficiency that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, makes the parent unable or unwilling to provide an adequate permanent home for the child;

(b) The parent has been medically diagnosed by a qualified health professional with an extreme physical incapacitation that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, prevents the parent, despite reasonable accommodations, from providing minimally acceptable care for the child;

(c) The parent is suffering from habitual alcoholism or other drug addiction and has failed to successfully complete alcohol or drug treatment as reasonably directed by the court;

(d) The parent is unwilling to provide reasonably necessary food, clothing, shelter, or medical care for the child; reasonably necessary medical care does not include recommended or optional vaccinations against childhood or any other disease;

(e) The parent has failed to exercise reasonable visitation or communication with the child;

(f) The parent's abusive or neglectful conduct has caused, at least in part, an extreme and deep-seated antipathy by the child toward the parent, or some other substantial erosion of the relationship between the parent and the child;

(g) The parent has committed an abusive act for which reasonable efforts to maintain the children in the home would not be required under Section 43-21-603, or a series of physically, mentally, or emotionally abusive incidents, against the child or another child, whether related by consanguinity or affinity or not, making future contacts between the parent and child undesirable; or

(h) (i) The parent has been convicted of any of the following offenses against any child:

1. Rape of a child under Section 97-3-65;
2. Sexual battery of a child under Section 97-3-95(c);
3. Touching a child for lustful purposes under Section 97-5-23;
4. Exploitation of a child under Sections 97-5-31 through 97-5-37;
5. Felonious abuse or battery of a child under Section 97-5-39(2); or

6. Carnal knowledge of a step or adopted child or a child of a cohabitating partner under Section 97-5-41; or

(ii) The parent has been convicted of:

1. Murder or voluntary manslaughter of another child of the parent;

2. Aiding, abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of the child or another child of the parent; or

3. A felony assault that results in the serious bodily injury to the child or another child of the parent.

SECTION 13. The following shall be codified as Section 93-15-123, Mississippi Code of 1972:

93-15-123. **Court discretion not to terminate.**

Notwithstanding any other provision of this chapter, the court may exercise its discretion not to terminate the parent's parental rights in a proceeding under this chapter if the child's safety and welfare will not be compromised or endangered and terminating the parent's parental right is not in the child's best interests based on one or more of the following factors:

(a) The Department of Human Services has documented compelling and extraordinary reasons why terminating the parent's parental rights would not be in the child's best interests;

(b) There is a likelihood that continuing reasonable efforts for achieving reunification will be successful;

(c) Terminating the parent's parental rights would inappropriately relieve the parent of the parent's financial or support obligations to the child; or

(d) The child is being cared for by the other parent, or a relative, guardian, or custodian, in a residence not occupied by the abusive or neglectful parent and terminating the parent's parental rights would not expedite the process for obtaining a satisfactory permanency outcome.

SECTION 14. The following shall be codified as Section 93-15-125, Mississippi Code of 1972:

93-15-125. **Compliance with Indian Child Welfare Act.** In any proceeding under this chapter, where the court knows or has reason to know that an Indian child is involved, the court must comply with the Indian Child Welfare Act (25 USCS Section 1901 et seq.) in regard to notice, appointment of counsel, examination of reports or other documents, remedial services and rehabilitation programs, and other protections the act provides. Additionally, no termination of parental rights may be ordered in the proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the Indian child by the parent is likely to result in serious emotional or physical damage to the Indian child.

SECTION 15. The following shall be codified as Section 93-15-127, Mississippi Code of 1972:

93-15-127. **Effect on another parent's rights.** Termination under this chapter of a parent's parental rights does not affect the parental rights of another parent.

SECTION 16. The following shall be codified as Section 93-15-129, Mississippi Code of 1972:

93-15-129. **Petitions involving sexual abuse or serious bodily injury treated as preference case.** In any case where a child has been removed from the custody and care of the parent due to sexual abuse or serious bodily injury to the child, or is not living in the home of the offending parent, the court shall treat the petition for termination of parental rights as a preference case to be determined with all reasonable expedition.

SECTION 17. The following shall be codified as Section 93-15-131, Mississippi Code of 1972:

93-15-131. **Post-judgment proceedings.** (1) If the court does not terminate the parent's parental rights, the custody and care of the child shall continue with the person, agency, or institution that is holding custody of the child at the time the judgment is rendered, or the court may grant custody to the parent whose rights were sought to be terminated if that is in the best interest of the child. If the Department of Human Services has legal custody of the child, the court must conduct a permanency hearing and permanency review hearings as required under the Mississippi Youth Court Law and the Mississippi Uniform Rules of Youth Court Practice.

(2) If the court terminates the parent's parental rights, the court shall place the child in the custody and care of the other parent or some suitable person, agency, or institution until an adoption or some other permanent living arrangement is achieved. No notice of adoption proceedings or any other subsequent proceedings pertaining to the custody and care of the child shall be given to a parent whose rights have been terminated.

SECTION 18. The following shall be codified as Section 93-15-133, Mississippi Code of 1972:

93-15-133. **Review by Supreme Court.** Appeal from a final judgment on the termination of parental rights under this chapter shall be to the Supreme Court of Mississippi pursuant to the Mississippi Rules of Appellate Procedure.

SECTION 19. Section 93-17-5, Mississippi Code of 1972, is amended as follows:

93-17-5. (1) There shall be made parties to the proceeding by process or by the filing therein of a consent to the adoption proposed in the petition, which consent shall be duly sworn to or acknowledged and executed only by the following persons, but not before seventy-two (72) hours after the birth of * * * the child:

(a) The parents, or parent, if only one (1) parent, though either be under the age of twenty-one (21) years; * * *

(b) * * * If both parents are dead, then any two (2) adult kin of the child within the third degree computed according

to the civil law * * *i; if one of such kin is in possession of the child, he or she shall join in the petition or be made a party to the suit; or

(c) The guardian ad litem of an abandoned child, upon petition showing that the names of the parents of * * * the child are unknown after diligent search and inquiry by the petitioners. In addition to the above, there shall be made parties to any proceeding to adopt a child, either by process or by the filing of a consent to the adoption proposed in the petition, the following:

(i) Those persons having physical custody of * * * the child, except persons * * * who are acting as foster parents as a result of placement with them by the Department of Human Services of the State of Mississippi.

(ii) Any person to whom custody of * * * the child may have been awarded by a court of competent jurisdiction of the State of Mississippi.

(iii) The agent of the county Department of Human Services of the State of Mississippi that has placed a child in foster care, either by agreement or by court order.

(2) * * * The consent may also be executed and filed by the duly authorized officer or representative of a home to whose care the child has been delivered. The child shall join the petition by * * * the child's next friend.

* * *

(* * *3) If * * * consent * * * is not filed, * * * process shall be had upon the parties as provided by law for process in person or by publication, if they * * * are nonresidents of the state or are not found therein * * * after diligent search and inquiry, * * * the court or chancellor in vacation may fix a date in termtime or in vacation to which process may be returnable and shall have power to proceed in termtime or vacation. In any event, if the child is more than fourteen (14) years of age, a consent to the adoption, sworn to or acknowledged by the child, shall also be required or personal service of process shall be had upon the child in the same manner and in the same effect as if * * * the child were an adult.

SECTION 20. Section 93-17-6, Mississippi Code of 1972, is amended as follows:

93-17-6. (1) Any person who would be a necessary party to an adoption proceeding under this chapter and any person alleged or claiming to be the father of a child born out of wedlock who is proposed for adoption or who has been determined to be such by any administrative or judicial procedure (the "alleged father") may file a petition for determination of rights as a preliminary pleading to a petition for adoption in any court which would have jurisdiction and venue of an adoption proceeding. A petition for determination of rights may be filed at any time after the period ending thirty (30) days after the birth of the child. Should competing petitions be filed in two (2) or more courts having

jurisdiction and venue, the court in which the first such petition was properly filed shall have jurisdiction over the whole proceeding until its disposition. The prospective adopting parents need not be a party to * * * the petition. Where the child's biological mother has surrendered the child to a home for adoption, the home may represent the biological mother and her interests in this proceeding.

(2) The court shall set this petition for hearing as expeditiously as possible allowing not less than ten (10) days' notice from the service or completion of process on the parties to be served.

(3) The sole matter for determination under a petition for determination of rights is whether the alleged father * * * is the natural father of the child based on Mississippi law governing paternity or other relevant evidence.

* * *

(* * * 4) If the court determines that the alleged father * * * is not the natural father of the child, he shall have no right to object to an adoption under Section 93-17-7.

(* * * 5) If the court determines that the alleged father * * * is the child's natural father and that he objects to the child's adoption, the court shall stay the adoption proceedings to allow the filing of a petition to determine whether the father's parental rights should be terminated pursuant to

Section 93-15-119, or other applicable provision of the
Mississippi Termination of Parental Rights Law.

(6) If a petition for the termination of parental rights is
filed and, after an evidentiary hearing, the court does not
terminate the father's parental rights, the court shall set the
matter as a contested adoption as provided in * * * Section
93-17-8.

(7) A petition for determination of rights may be used to
determine the rights of alleged fathers whose identity is unknown
or uncertain. In such cases the court shall determine what, if
any, notice can be and is to be given * * * those persons.
Determinations of rights under the procedure of this section may
also be made under a petition for adoption.

(8) Petitions for determination of rights shall be
considered adoption cases and all subsequent proceedings such as a
contested adoption under Section 93-17-8 and the adoption
proceeding itself shall be portions of the same file.

(9) Service of process in the adoption of a foreign born
child shall be governed by Section 93-15-105(5).

SECTION 21. Section 93-17-7, Mississippi Code of 1972, is
amended as follows:

93-17-7. (1) No infant shall be adopted to any person
if * * * a parent whose parental rights have not been terminated
under the Mississippi Termination of Parental Rights Law, after
having been summoned, shall appear and object thereto before the

making of a decree for adoption * * *. A parent shall not be summoned in the adoption proceedings nor have the right to object thereto if the parental rights of the parent * * * have been terminated by the procedure set forth in * * * the Mississippi Termination of Parental Rights Law (Section 93-15-101 et seq.), and * * * the termination shall be res judicata on the question of parental abandonment or unfitness in the adoption proceedings.

(2) * * * No person, whether claiming to be the parent of the child or not, has standing to object to the adoption if:

(a) A final judgment for adoption that comports with all applicable state and federal laws has been entered by a court; and

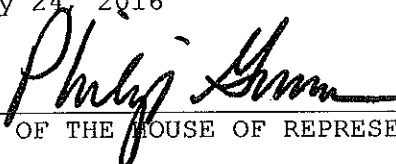
(b) Notice to the parties of the action, whether known or unknown, has been made in compliance with Section 93-17-5.

SECTION 22. Section 93-17-9, Mississippi Code of 1972, which provides for the surrender of a child to an organization organized for the purpose of caring for or adoption of children, is repealed.

SECTION 23. Sections 93-15-103, 93-15-105, 93-15-107, 93-15-109 and 93-15-111, Mississippi Code of 1972, which comprise the substantive portion of the Termination of Rights of Unfit Parents Law that was first adopted in 1980, are repealed to be replaced as directed in Section 2 of this act.

SECTION 24. This act shall take effect and be in force from
and after its passage.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 24, 2016


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 30, 2016


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

April 18, 2016
9:47am